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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/523,346	09/02/2005	Michael Grill	10191/4088	5758
26646 7590 03/17/2008 KENYON & KENYON LLP ONE BROADWAY NEW YORK, NY 10004				
EXAMINER				
LU, SHIRLEY				
ART UNIT		PAPER NUMBER		
2612				
MAIL DATE		DELIVERY MODE		
03/17/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/523,346

Applicant(s)

GRILL ET AL.

Examiner

SHIRLEY LU

Art Unit

2612

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01/29/2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 8-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 8-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

Applicants' arguments have been read and considered.

a. Applicant argues on page 5, last paragraph that the prior art does not specifically disclose 'the setpoint engine speed,' and "a setpoint value for the output variable starts from the given setpoint value for the output variable and a current operating variable of the drive unit the optimum operating point is determined..." on page 6, second paragraph.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the setpoint engine speed; a setpoint value for the output variable starts from the given setpoint value for the output variable and a current operating variable of the drive unit the optimum operating point is determined...) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

b. Applicant argues on page 6, second paragraph that the prior art does not specifically disclose the dependence of the optimal operating point on a setpoint value and "efficiency-optimal for every output variable," on page 7, first paragraph.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies

(i.e., the dependence of the optimal operating point on a setpoint value; efficiency-optimal for every output variable to be generated by the drive unit) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Instead, the claim limitation recites a variable to be output. Applicant should consider adding more specificity regarding the drive unit and setpoint value to overcome to the prior art.

c. Applicant argues on page 7, that the prior art does not specifically disclose 'wherein the output variable includes a setpoint torque.'

In response, an optimum operating point is indeed a function of an output variable to be output by the drive unit, i.e. a setpoint torque, which is affected by the gear. A higher engine efficiency factor indeed is an optimum operating point compared to the operating point prior to using the gear shift recommendation.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claim(s) 8-24 is/are rejected under 35 U.S.C. 102(b) as being anticipated by Klatt (4510906).

Art Unit: 2612

As to claim(s) 8 and 16, Klatt discloses:

A method for signaling information relevant for an operation of a motor vehicle, comprising:

forming the information by an operating point of a drive unit of the motor vehicle;

forming a haptic signal at a control element of the motor vehicle as a function of the operating point, wherein an optimum operating point of the drive unit is indicated by the haptic signal ([2, 25-62]; accelerator pedal); and

determining the optimum operating point as a function of an output variable to be output by the drive unit and as a function of an instantaneous operating variable of the drive unit ([2, 32-45]).

As to claim(s) 9, Klatt discloses:

the control element includes an accelerator pedal ([2, 45-62]; accelerator pedal; fig. 1).

As to claim(s) 10, 17, 21, Klatt discloses:

the optimum operating point includes an optimum engine efficiency ([2, 32-62];

For example, the optimal operating point depends on and is a function of the engine speed, as an instantaneous operating variable of the drive unit, and the optimal operating point is also determined as a function of the engine speed desired to be output (output variable to be output by the drive unit) since "optimal operating point" correlates engine output point that yields optimized fuel economy as a target).

Art Unit: 2612

As to claim(s) 11, Klatt discloses:

the output variable includes a setpoint torque ([3, 1-15] shift gears; [2, 32-45] the engine).

As to claim(s) 12, Klatt discloses:

the instantaneous operating variable includes an engine speed ([2, 32-45]).

As to claim(s) 13, Klatt discloses:

further comprising: determining the output variable as a function of a position of the control element (fig. 1; [2, 45-62]).

As to claim(s) 14, Klatt discloses:

a haptic signaling starts approximately when the optimum operating point is reached ([2, 32-62]; restraining point).

As to claim(s) 15, Klatt discloses:

further comprising: forming the haptic signal by a restoring force acting on the control element (2, 32-62; restraining point).

As to claim(s) 18, 22, Klatt discloses:

the output variable includes a setpoint torque, and wherein the instantaneous operating variable includes an engine speed (see claims 11, 12).

As to claim(s) 19, 23, Klatt discloses:

the control element includes an accelerator pedal, wherein the optimum operating point includes an optimum engine efficiency, wherein the output variable includes a setpoint torque, and wherein the instantaneous operating variable includes an engine speed (see claims 10-12).

As to claim(s) 20, 24, Klatt discloses:

a determining arrangement to determine the output variable as a function of a position of the control element (fig. 1; [2, 32-45]);

wherein the control element includes an accelerator pedal, wherein the optimum operating point includes an optimum engine efficiency, wherein the output variable includes a setpoint torque, and wherein the instantaneous operating variable includes an engine speed (see claim 19).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shirley Lu whose telephone number is (571) 272-8546. The examiner can normally be reached on 8:30-5:00 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, George Bugg can be reached on (571) 272-2998. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Art Unit: 2612

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SL

/George A Bugg/

Acting SPE of Art Unit 2612